**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 7135 of 1998**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE JAYANT PATEL**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**GOVIND MURJI PATEL (KERAI) & 2 - Petitioner(s)**
**Versus**
**STATE OF GUJARAT & 5 - Respondent(s)**

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**Appearance :**
MR SK PATEL for Petitioner(s) : 1,
MR SATYAM Y. CHHAYA, AGP for Respondent(s) : 1 - 2.
MR NV ANJARIA for Respondent(s) : 3 - 4.

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**CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL**

**Date : 13/11/2006**

**ORAL JUDGMENT**

1. The short facts of the case are that the respondent No.4 Gram Panchayat had moved the

proposal for disposal of the land by auction to Town Development Officer (hereinafter referred to as “TDO”) and the said land as per the petitioners was forming part of *Gamtal*/village site for which the permission came to be granted for such purpose by TDO on 26.3.1984. Thereafter, the auction was held on 22.10.1984 and the petitioners participated at the auction and the offer of the petitioners was accepted. On 28.2.1985, the order came to be passed by the TDO confirming the sale and the land admeasuring 400.31 sq. mtrs was given to the petitioner No.1 on various conditions as mentioned in the order. In the same manner, the land admeasuring 382.52 sq. mtrs by another order came to be granted by confirming the sale on 28.5.1985 in favour of Vinod Murji (Kerai), petitioner No.2. As per the petitioners, after the possession of the land was handed over, the adjacent land holder, Smt. Laxmibai Velgi Hirani preferred Regular Civil Suit No.230 of 1987 for challenging the allotment of the plot to the petitioners and prayed for injunction against construction. In the said suit, the District Development Officer (hereinafter referred to as

"DDO") as well as TDO were parties. The learned Civil Judge ultimately passed the order dated 20.7.1987 below application Ex.6, whereby for the reasons recorded in the order the application for injunction was dismissed with costs. The plaintiff therein, Smt. Laxmibai Vejgi Hirani carried the matter before the District Court being Civil Misc. Appeal No.83 of 1988 and the said appeal, as per the order dated 17.6.1992 passed by the learned Assistant Judge, Bhuj, was dismissed.

2. It appears that, as per the petitioner, thereafter the other relatives of Lakshimiben Hirani preferred Regular Civil Suit No.487 of 1993 for restraining the petitioners from making construction contending, inter alia, that the construction would obstruct the water flow. In the said suit below application Ex.19, the learned Civil Judge dismissed the same by vacating the order of status-quo, as per the order dated 24.11.1993. It appears that the Gram Panchayat also preferred Regular Civil suit No.685 of 1993 for reliefs, inter alia, to restrain the petitioners from making any construction over the land in question. In the said suit, the application Ex.5 was also submitted for interim injunction. The learned Civil Judge (S.D.), as per the order dated 10.1.1994 passed below Ex.5 in the said suit allowed the application and granted injunction against the

petitioners, who were defendant therein from making construction over the land in question for maintenance of status-quo. It appears that the petitioners and others carried the matter before the District Court being Misc. Civil Appeal No.16/1994 against the said interim injunction granted by the learned Civil Judge and in the said appeal, as per the order below Ex.5 passed by the learned Extra Assistant Judge dated 25.3.1994 the operation and implementation of the order passed by the learned Civil Judge below Ex.5 in Civil Suit No.685 of 1993 was stayed and the status-quo was vacated.

3. It appears that the Gram Panchayat carried the matter before this Court by preferring Civil Revision Application No.522 of 1994 and it was declared before this Court that the petitioner Gram Panchayat would like to withdraw the application for temporary injunction as well as the suit and this Court permitted such withdrawal. However, it was observed that it would be open for the petitioner therein i.e. Gram Panchayat to move appropriate authority. It was also observed by this Court that the competent authority shall decide the matter without being influenced by the order passed by this Court or the trial Court or the appellate Court and shall dispose of the matter on merits of the case.

4. It appears that thereafter the Gram Panchayat

preferred the revision before the Dy. Collector being No.7/1994 and the Dy. Collector passed the order on 10.7.1995, whereby the revision was allowed and the orders of the allotment of the plot dated 28.5.1985 to both the petitioners were set aside and it was ordered to refund the amount by he Gram Panchayat to the petitioners. The matter was carried in appeal before the District Collector, who ultimately passed the order dated 2.11.1995, whereby the appeal was dismissed and the order of the Dy. Collector was confirmed. The petitioners further carried the matter before the State Government in revision and ultimately as per the order dated 18.5.1998, the State Government also dismissed the revision and confirmed the order of the District Collector. It is under these circumstances, the petitioners have approached this Court by preferring the present petition.

5. I have heard Mr.Patel, learned Counsel for the petitioners, Mr.Chhaya, learned AGP for Respondents No.1 and 2, Mr.Anjaria, learned Counsel for Respondents No.3 and 4.

6. It is not in dispute that *sanad* of the land in question was already issued, when the revisional powers were exercised by the authority for the first time in the year 1994. It appears that the *sanad* came to be issued pursuant to the orders dated

28.2.1985, more particularly in view of the conditions incorporated. It is well settled that if the *sanad* has been issued in pursuance to the order passed by the revenue authority for allotment of the land the powers under the Land Revenue Code of revisional jurisdiction cannot be exercised, since the execution of the *sanad* is an agreement between the purchaser of the land/allottee of the land and the State Government. The reference may be made to the decision of this Court in case of **"Patel Raghav Natha v. G.F. Mankodi, Commissioner, Rajkot Division and Others", reported in 1965 GLR, 34** and more particularly the concluding observations made at para 13 as under:

> "13....Therefore, to my mind, the term included in this agreement can only mean that over and above the conditions which were specifically mentioned in the agreement, other conditions contained in any of the provisions of the Code, which can apply to such a grant, shall also apply. In my view, therefore, Section 211 cannot apply to the agreement, even if it is tried to be so made applicable by this particular condition. If in law there is no jurisdiction under Section 211 to revise an agreement no amount of terms included in a document between the parties can vest in the

authority that jurisdiction. Under these circumstances, I find it difficult to accept the submissions made on behalf of the Municipality whereby they have urged that the inclusion of this condition would entitle the Government to revise the agreement itself under its powers, under Section 211. As a result of this train of discussion and reasoning, it must be held that the Commissioner's order is without authority and that there was no jurisdiction vested in him to pass an order which goes to nullify the agreement. In my view, the *sanad* or the agreement passed in this case as a result of the Collector's order still stands and is binding on both the sides till it is set aside in due course of law. As I have already observed that observed and as was observed in the various decisions discussed above, the right procedure for the Government is to go in a civil suit to set aside that agreement. Till then it stands good and binding."

7. Therefore, if the matter is considered in light of the above legal position, the exercise of the revisional power by the first authority and its confirmation thereof by the higher authorities can be said as without there being any jurisdiction to

exercise the appellate power/revisional power and the proper course for the aggrieved party was to prefer the civil suit.

8. Mr.Chayya, learned AGP attempted to distinguish the above referred judgement by contending that in case of **“Govindbhai Somabhai Nai & Ors. v. State of Gujarat & Ors.”, reported in 1987(2) GLR, 47**, the above referred decision of this Court in case of **“Patel Raghav Natha v. G.F. Mankodi, Commissioner, Rajkot Division and Others“(Supra)** came to be considered as observed in para 14 of the said decision and this Court observed that as the case before this Court in case of **'“Patel Raghav Natha v. G.F. Mankodi, Commissioner, Rajkot Division and Others“(supra)** was not a case for no authority or jurisdiction on the part of the officer, who granted the land, the judgement shall not be applicable to that case. Mr.Chayya, learned AGP in furtherance of his submission contended that even in the present case the allotment of the land was without there being any authority on the part of Gram Panchayat or the Taluka Panchayat. He submitted that the land was not forming part of the village site for which the authority was with the Gram Panchayat or Taluka Panchayat, as the case may be, but was forming part of water stream (volka) and, therefore, it was a

revenue land under Section 37 of the Land Revenue Code, for which the only authority was with the Government and not with Taluka Panchayat. He, therefore, submitted that if the action or the allotment was without there being any authority, the decision in case of **"Patel Raghav Natha v. G.F. Mankodi, Commissioner, Rajkot Division and Others"(supra)** cannot be made applicable and even if *sanad* is issued the revisional power could be exercised and, therefore, this Court may examine the matter on that basis.

9. The contention appears to be attractive, but on detailed scrutiny appears to be without merit. The perusal of the order of the allotment dated 28.2.1985 shows that while passing the order of confirming the sale, the reference is made to the Government Resolution dated 3.6.1980. Further, Taluka Panchayat had granted permission to hold the auction by the Gram Panchayat as per the order dated 26.3.1984. Therefore, it appears that the TDO passed the order in exercise of the powers under the revenue jurisdiction. Had the order been passed under Gujarat Panchayat Act, the appellate authority would be the District Panchayat or the revisional authority would be the State Government as per the provisions of the Panchayat Act. In the present case, revisional powers are exercised by the Dy.

Collector in exercise of the revenue jurisdiction. Therefore, if the power is exercised by the TDO under Bombay Land Revenue Code, since the land was situated within the area of Gram Panchayat, it would not be a case of inherent lack of jurisdiction on the part of the parties, who confirmed the sale by approving the process undertaken by the Gram Panchayat.

10. Apart from the above, the allotment was made in the year 1985 and the revisional powers are exercised in the year 1994, roughly after a period of nine years from the date of the allotment. Such period ex facie can be said as unreasonable period and the same is coupled with the circumstances that during the said period one suit was filed being Regular Civil Suit No.230/1987 by Smt. Laxmibai Velgi Hirani, another by Govind Natha through his wife Valbai Govind Natha being Regular Civil Suit No.487/1993 and the third by Mirzapur Gram Panchayat being Regula Civil Suit No.685/1993 and the legality and validity of the allotment was prima facie examined by the Civil Court while considering the application for temporary injunction and the Civil Court as well as the appellate Court prima facie found no case for interference with the allotment and the construction to be made by the petitioners over the land in question. Further in the Civil

Suit No.685 of 1993, the State Government was also party to the proceedings being Defendant No.5. Therefore, after hearing the State Government the order came to be passed by the appellate Court on 25.3.1994 below application Ex. 5 in Civil Misc. Appeal No.16 of 1994. The observations made by the lower authority namely; the Dy. Collector, Collector and the State Government, cannot be read as nullifying the effect of the order of the competent Civil Court upholding the legality and validity of the allotment and the right to make construction over the land, by taking the basis that the land was Government land and that the Taluka Panchayat had no power to make the allotment. The interpretation of the order dated 26.4.1994 of this Court in revision application No.522 of 1994 cannot be read for nullifying the effect of the observations made by the Civil Court, in any case, in other two suits as well as of the appellate Court concerned. Therefore, in view of the aforesaid circumstances, it cannot be said that there was inherent lack of power with the Gram Panchayat or Taluka Panchayat for allotment of the land in question. On the contrary, if the State Government or any authority of the State Government are aggrieved by the allotment made by the Taluka Panchayat and if the suit is filed since the *sanad* is already issued,

there will be proper examination of the authority of the Taluka Panchayat to allot the land since the land was forming part of the village site, after taking into consideration the Government Resolution dated 3.6.1980.

11. It is true that in a matter of allotment of the Government land, revisional jurisdiction or the scrutiny by the higher authority is normally not to be excluded. However, it may vary from facts to facts. In a case where the exercise of power is in collusion or with extraneous consideration, it may stand on a different footing. In a case where the action is with inherent lack of jurisdiction the same also stand on a different footing. But in a case where the action has proceeded on the basis that the citizens are led to believe that the Officer has the authority to exercise the power and the auction participant bonafide has altered his position substantially to a great extent and if the officers of the State Government have not immediately initiated the action, then in such circumstances, if the challenge is brought to the Court against the allotment and may be on the detailed scrutiny, the Court finds that the powers were not delegated or otherwise to the officer, who allotted the land, the Court while exercising the power would try to balance the situation of making

the loss good to the innocent person, who was led by the representation made of the officers of the State Government, save and except the cases where the exercise of power in favour of the beneficiary is in collusion with the officer or extraneous consideration prevailed. Nowhere through out in the proceedings the authorities have found that the powers were exercised in collusion and/or with any extraneous consideration. Therefore, under such circumstances, even if the allotment is to be interfered with or set aside by the law Courts, the proper evidence would be required to be brought on record for alteration of the condition by the party whether acted in bonafide and, if yes, the quantum for compensating for the default, if any, ultimately found of the officers of the State Government or the delegatee of the State Government. Therefore, unless such evidence is brought on record, the relief for setting aside the agreement for allotment of the land by way of *sanad* may not be granted by the competent Court, merely because subsequently it is allegedly found that the officer had no authority. As such, the law Court may be required to consider simultaneously the matter for passing appropriate orders for compensating the aggrieved party while acting under bonafide belief and altering his possession based on the same. In the

present case no material or evidence is placed on record for the exercise of power in collusion or with extraneous consideration, nor as observed hereinabove, for inherent lack of power and, therefore, it would be just and proper to relegate the aggrieved party to prefer civil suit for setting aside of the allotment. In view of the aforesaid circumstances, I find no case to take a different view than the view taken by this Court in the case of **"Patel Raghav Natha v. G.F. Mankodi, Commissioner, Rajkot Division and Others"(supra)**.

12. It may also be recorded that Mr.Anjaria, learned Counsel appearing for the TDO as well as Sarpanch of the Gram Panchayat, declared before the Court that he has instructions for not to contest the case, but to abide by the orders, which may be passed by this Court, considering the legality and validity of the order of the State Government.

13. In view of the aforesaid observations, the impugned orders passed by the Dy. Collector, its confirmation thereof by the Collector and the further confirmation by the State Government, are quashed and set aside with the observations that the aggrieved party, including the State Government shall be at liberty to prefer appropriate civil suit in case the *sanad* is not lawfully issued. If such civil suit is filed, the rights and contentions of

both the sides shall remain open, including for the limitation.

14. The petition is allowed to the aforesaid extent. Considering the facts and circumstances, there shall be no order as to costs. Rule partly made absolute.

13.11.2006 **(Jayant Patel, J.)**

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